

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**DAVID BRIAN JENNINGS,**  
**Plaintiff,**

**v.**

**RISSIE OWENS, et al.,**  
**Defendants.**

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**Civil Action No. A-06CA990-LY**

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**DEFENDANTS' MOTION FOR INTERIM  
STAY OF JUDGMENT PENDING APPEAL**

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**TO THE HONORABLE JUDGE OF THIS COURT:**

**NOW COME** Defendants Rissie Owens, Bryan Collier, Jay Patzke, Linda McCarver, and Kacy Williams (Teresa Perez), by and through the Office of the Attorney General of Texas, submit this their Motion For Interim Stay of Judgment Pending Appeal pursuant to Fed. R. App. P. 8(a). In support, Defendants would respectfully show as follows:

1. On December 12, 2008, the Court entered its final order in this case.<sup>1</sup> On January 12, 2009, Defendants filed its notice of appeal.<sup>2</sup>
2. On December 29, 2008, Defendants moved the Court pursuant to Fed. R. App. P 8(a) to stay its final order pending appeal to the Fifth Circuit Court of Appeals. The District Court denied the motion to stay on January 9, 2009.<sup>3</sup>

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<sup>1</sup> Docket Entries #114-115.

<sup>2</sup> Docket Entry #125.

<sup>3</sup> Docket Entry #124.

3. Defendants are requesting an interim stay of judgment of ten (10) days in order to maintain the *status quo* long enough so that appellant can renew its stay request in the Fifth Circuit court of appeals.<sup>4</sup> Defendants wish to avoid being subjected to prejudicial harm in attempting to comply with the December 12, 2008 judgment and with a potential civil contempt charge for failure to comply with and obey the Court's final order.
4. Defendants will be filing an Emergency Motion For Stay Of Judgment with the Fifth Circuit later today. For the reasons stated, Defendants respectfully request that the Court grant their Motion For Interim Stay Of Judgment Pending Appeal.

Respectfully submitted,

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/s/ CAROL M. GARCIA  
**CAROL M. GARCIA**  
Assistant Attorney General  
Law Enforcement Defense Division  
Attorney in Charge  
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**KIM COOGAN**  
Assistant Attorney General

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<sup>4</sup>*Wali v. Coughlin*, 596 F.Supp. 1064, 1069 (N.D.N.Y. 1984), affirmed, 754 F.2d 1015 (2d Cir. 1985).

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**ATTORNEYS FOR DEFENDANTS**

**NOTICE OF ELECTRONIC FILING**

I, **CAROL M. GARCIA**, Assistant Attorney General of Texas, certify that I have electronically submitted for filing a copy of this *Defendants' Motion For Interim Stay of Judgment Pending Appeal* in accordance with the Electronic Case Files System of the Western District of Texas, on this the 20<sup>th</sup> day of January 2009.

/s/ CAROL M. GARCIA

**CAROL M. GARCIA**

Assistant Attorney General

**CERTIFICATE OF SERVICE**

\_\_\_\_\_, I, **CAROL M. GARCIA**, Assistant Attorney General of Texas, do hereby certify that a true and correct copy of the above and foregoing *Defendants' Motion For Interim Stay of Judgment Pending Appeal* has been served by placing same in the United States Mail, postage prepaid on this the 20<sup>th</sup> day of January 2009, addressed to:

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